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LETTER DATED 3 MARCH 1997 FROM THE PERMANENT REPRESENTATIVE OF RWANDA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit the text of a memorandum addressed by the Government of Rwanda to the Special Representative of the United Nations Secretary-General for the Great Lakes Region, Mr. Mohammed Sahnoun.

The purpose of the memorandum is to enable the Special Representative and Council members to have a better understanding of the underlying causes of the crisis in eastern Zaire in the search for appropriate solutions to Zaire's internal crisis.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Gideon KAYINAMURA
Ambassador
Permanent Representative
of Rwanda to the United Nations

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Annex

[Original: French]

Memorandum dated 19 February 1997 on the crisis in eastern Zaire, addressed to Mr. Mohammed Sahnoun, Special Representative of the United Nations and the Organization of African Unity for the Great Lakes region, on the occasion of his visit to Rwanda

Since September 1996, Zaire has been the scene of a civil war between the Alliance of Democratic Forces for the Liberation of Congo-Zaire and the Mobutu regime. This war, which began in South Kivu, has now engulfed Haut-Zaire, having encompassed North Kivu, and it is now spreading to northern Shaba, in the Kalémie and Moba region.

As often happens in such cases, the sensational has overshadowed analysis, and very few international newspapers are paying any attention to the real causes of this conflict.

Both parties to the conflict, moreover, have actively engaged in a certain amount of propaganda. The aim of this propaganda is to propound a version of events that covers up the responsibility of the Kinshasa authorities for the origins of the current war. In pursuit of that aim, the Government of Zaire is seeking scapegoats in the form of neighbouring countries, such as Rwanda.

For anyone who has paid the least bit of attention to developments in the situation, however, it is decidedly difficult to gloss over the motives that have given rise to this conflict. These motives are, moreover, too recent to be dismissed with the stroke of a pen. They include the extension of the Rwandan genocide into eastern Zaire, the arbitrary withdrawal from some inhabitants of Zaire of their right to their nationality, and the attempt to drive those inhabitants from their land.

Above and beyond this internal crisis in Zaire, there is a serious moral and legal problem with respect to the refugee status that has been improperly accorded to the criminal perpetrators of genocide.

I. ACTS OF GENOCIDE, THE BASIS OF THE ZAIRIAN CRISIS

In early 1996, the international media regularly reported on the ongoing tragedy in eastern Zaire. It all started in North Kivu, where militiamen and ex-soldiers of the regime in power in Rwanda before July 1994, perpetrators of genocide, were plundering, ill-treating and massacring Zairian citizens, while the Kinshasa authorities stood idly by. Worse yet, the criminal perpetrators of genocide benefited here and there from the complicity and even the assistance of Zairian military personnel and local civilian authorities. The main targets in these tragic events were a group of Kinyarwanda-speaking Zairians and members of other tribes who tried to hide their neighbours and compatriots who were threatened with death and extermination.

As early as March 1996, the Government of Rwanda was beginning to receive in its territory waves of Zairian refugees fleeing the massacres at Rutshuru and Masisi in North Kivu.

At the time, diplomats accredited to Kigali witnessed the influx of refugees, who reported cases of torture and inhuman massacres perpetrated by Rwandan ex-soldiers and militiamen. The refugees had been witnesses to scenes in which, inter alia, people were burned alive. Rwanda and certain newsmedia have since then repeatedly condemned these acts of genocide. Unfortunately, however, these incidents did not receive in time all the attention they deserved from the international community.

The United Nations Commission on Human Rights, however, has looked seriously into this problem. At the same time, it has condemned the involvement of local authorities and Zairian military personnel in the above-mentioned acts of genocide (report of the Commission issued on 16 September 1996). But before that date, the customary chiefs in North Kivu representing the Hunde, Nande, Nyanga and Havu groups had expressed their deep outrage at these events. In a letter addressed to the Zairian authorities, the chiefs expressed surprise that their peoples were no longer receiving protection from those whose responsibility it was to provide such protection. The letter expressing the indignation of the customary chiefs was published in early August 1996 by the Zairian Press Agency (AZAP). To our knowledge, AZAP is an official agency of the Kinshasa Government.

Was it through corruption that the Rwandese militiamen and ex-soldiers managed to obtain the complicity and assistance of the Zairian authorities in spreading to eastern Zaire the genocide that had taken place in Rwanda in 1994? Did the two parties have something in common against a group of Kinyarwanda-speaking Zairians or was their cause coupled with corruption?

Whatever the reasons for this tragedy, it is still surprising, to say the least, that the Zairian State should, in its own territory, share such a responsibility with the criminal perpetrators of the Rwandan genocide.

Embarrassed by the turn of events since February 1996, some Zairian authorities have now taken to seeking scapegoats outside the country. That is why they are trying to trump up charges of involvement on the part of neighbouring countries, including Rwanda, in a conflict which is strictly between Zairians.

II. WHEN ZAIRE WITHDRAWS ITS CITIZENS' RIGHT TO THEIR NATIONALITY

In their attempt to deny the domestic nature of the crisis, the Kinshasa authorities unwittingly provide proof of their real responsibility. For they have taken the liberty of obliterating, in a fit of who knows what kind of absent-mindedness or irresponsibility, the centuries-old history of a part of their population. Do they not describe the Banyamulenge of South Kivu as refugees who they allege came from Rwanda in 1961? Those are the very terms

used by Zaire's Prime Minister Mr. Léon Kengo wa Dondo in addressing the French-African summit meeting held on 4 and 5 December 1996 in Ouagadougou.

Such language does not differ much from that used by the present deputy Prime Minister and Minister for Foreign Affairs of Zaire, Mr. Gérard Kamanda wa Kamanda, when he was Minister of the Interior. It is precisely what he stated in his memorandum of 29 October 1996 addressed to the United Nations Security Council. In that document, Mr. Kamanda wa Kamanda depicts the Banyamulenge as arriving in the territory where they now live in 1924, and not in the sixteenth century as he himself had underlined (see S/1996/895). Mr. Kamanda wa Kamanda would do well to review his own sources, the best of which are, in our opinion, the "indigenous Bafulero" inhabitants, who confirm the centuries-old presence of the Banyamulenge in the area which they share with them.

In addition to the collective memory of the local inhabitants, it would also be instructive to refer to such varied written sources as those produced by the colonial administrators of the 1920s, the Belgian researchers J. Maquet and J. Hiernaux in 1954, and the historian A. Kagame in 1972.

President Mobutu, on the other hand, knows the history of his people better than his cabinet ministers do. And it was by no means an accident that he stated in December 1996, upon returning from his stay in Europe, that the problem of nationality could not possibly arise in Zaire. He was referring to the Banyamulenge. But no matter what the Kinshasa authorities may say, can a right as fundamental as the right to one's nationality be subjected to such continual questioning?

To be more specific, it should be emphasized that four categories of Kinyarwanda-speaking people were known in Zaire in the pre-colonial, colonial and post-colonial periods:

1. The population which became "Congolese" as a result of the drawing of the colonial frontiers at the International Conference of Berlin in 1885, including the Banyamulenge.

2. The population transplanted from Rwanda-Urundi to the Belgian Congo from 1925 to 1956 in order to satisfy the demand for manpower in agriculture and mining. These were immigrants who, upon arrival in their adoptive country, received a Congolese identity card.

3. The population made up of refugees who have fled Rwanda since 1959.

4. The recent Rwandan refugees of 1994, who have returned to their country of origin since 15 November 1996.

It is the first category that is of particular interest to us here. In redrawing the political map of Africa, the 1885 Berlin Conference also altered the frontiers of pre-colonial Rwanda. A consequence of this was the loss of the present-day regions of Rutshuru, Goma, Masisi, Kalehe and Île d'Ijwi and the present region of the Banyamulenge in South Kivu.

It is clear that the Rwandese living in those regions became "Congolese" citizens as a result of circumstances, while preserving their traditional cultural heritage, including their language. The fact was that a new geographical framework had been created, while the human realities remained unchanged, a situation that would be definitively confirmed in Brussels in 1911.

Certain circles in Kinshasa have sought to exploit the comments made by Rwanda's Head of State, Mr. Pasteur Bizimungu, in October 1996, when he condemned the acts of genocide perpetrated against a group of Kinyarwanda-speaking Zairian citizens which Zaire had inherited as a result of the Berlin Conference.

Let there be no confusion in this matter: Rwanda makes no claim to its pre-colonial territories which became Zairian after 1885. Nevertheless, it can hardly be criticized for regularly condemning the pursuit in eastern Zaire of the genocide committed in Rwanda in 1994 against the Kinyarwanda-speaking people referred to above. It was precisely in that spirit that reference was made at that time to the second Berlin Conference, which was intended at least to endorse the legal acceptance of the populations which some States, such as Zaire, had inherited from the first Berlin Conference.

Rwanda's highest-ranking authorities have already clearly expressed their solemn respect for the intangibility of the colonial frontiers. In their view, however, this principle presupposes at the same time that African States fully accept their responsibilities towards the populations which have changed countries since 1885.

As a neighbour of Zaire, Rwanda was one of the first witnesses of the tragedy which began in early 1996, as thousands of refugees fleeing the massacres found refuge in its territory.

It is, nevertheless, surprised that it was not until the Banyamulenge refused to submit passively to extermination in September 1996 that Zaire woke up. It is paradoxical that the then Vice-Governor of South Kivu, Mr. Luabandji Rwasi-Ngabo, should have reacted by issuing an ultimatum suggesting that they should leave their territory, as if they had another territory elsewhere.

III. THE ARMS TRAFFIC IN EASTERN ZAIRE PREDATES THE PRESENT WAR

In their attempt to internationalize a purely internal conflict, the Zairian authorities have on occasion referred to the use of heavy weapons by the Alliance forces, claiming that they could not have obtained this without outside assistance. It is inter alia on these grounds that senior Zairian officials have sought to accuse countries bordering on Zaire, including Rwanda.

However, this argument could be effective only in circles that are ill-informed about the Zairian context in general, and about the actual situation in eastern Zaire since 1994.

The truth is that weapons of all categories have been freely circulating in the above-mentioned region in recent times. And with good reason, in that the Rwandan ex-soldiers and militiamen had retained intact in their possession all the military equipment they had had in Rwanda. It was not without justification that the joint Rwandan-Zairian communiqué issued on the occasion of the visit by the Zairian Prime Minister, Léon Kengo wa Dondo, to Kigali in August 1996 emphasized the need to disarm the Rwandan ex-soldiers and militiamen who had taken refuge in Zaire.

Opening the forty-seventh session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees on 7 October 1996, Mrs. Sadako Ogata, the High Commissioner, reverted to this need to disarm the Rwandan ex-soldiers and militiamen, deploring the fact that it had to date been impossible to separate the refugees from the still armed Rwandan militiamen and ex-soldiers.

To these weapons which arrived from Rwanda in July 1994 must be added the many arms shipments which, for more than two years, have continually been transported to this part of Zaire, intended for these same ex-soldiers and militiamen. These arms came from certain external circles which are implicated by the United Nations report currently being finalized.

This presence in eastern Zaire of vast quantities of firearms in the hands of the Rwandan militiamen and ex-soldiers has resulted in the development in this region of an extensive contraband trade in such weapons of war. This trade was all the more easy in that the perpetrators of the Rwandan genocide in the region were not subject to any governmental control.

This is a situation of explosive insecurity to which the Rwandan Government has continually drawn attention in the interest both of Zaire and of the countries of the subregion.

The great paradox is that the Zairian Government had never reacted as long as the arms in question were being used to massacre its own, essentially Kinyarwanda-speaking, population. It woke up only in September 1996, when the population turned these weapons against their executioners. It is also important to note here that the Zairian Government categorically refused to collaborate with the Commission of Inquiry on the arms traffic in eastern Zaire. For the record, this was a Commission established by the United Nations Security Council.

Moreover, it can be no surprise to the authorities in Kinshasa that the Banyamulenge, for example, are trained in the use of firearms. They cannot but remember that the latter were armed and extensively used by the Mobutu Government to put down the Mulele rebellion in South Kivu in the 1960s.

That various Zairian forces should now have formed a coalition to combat the practices of the Kinshasa regime and halt the genocide that has been initiated in eastern Zaire has nothing to do with neighbouring countries such as Rwanda. Did not the Zairian Deputy Prime Minister and Minister for Foreign Affairs, Mr. Kamanda wa Kamanda, recently admit, in New York, that the leaders

of the Alliance forces, such as Laurent Kabila, Ngandu Kissase and others, are no less Zairian than he is?

IV. WHAT STATUS IS TO BE ASSIGNED TO THE CRIMINAL PERPETRATORS OF THE GENOCIDE IN ZAIRE?

A. An ambiguous situation since 1994

In July 1994, ideologists of genocide, many militiamen and ex-soldiers from the former Rwandan regime went into exile in Burundi, the United Republic of Tanzania and Zaire. They had just massacred in Rwanda more than a million people, for the most part Tutsi, along with Hutu who were opposed to the ideology of genocide.

These militiamen and ex-soldiers took with them when they fled hundreds of thousands of refugees whom they forced into exile through manipulation, and above all by force of arms. In the host countries, these criminal perpetrators of genocide remained in refugee camps where they literally took hostage the innocent populations that had been displaced with them. They sought to use them as political shields and threatened with death or killed anyone suspected of intending to return to Rwanda.

What is truly scandalous about this situation is that the armed militiamen and ex-soldiers had for all this time been benefiting from the international humanitarian assistance intended for the refugees. What is more, it is they who are running the camps, and ultimately using them as a tool of their manipulatory games.

In Zaire, the situation is thus extremely sensitive. Apart from the fact that almost all the Rwandan militiamen and ex-soldiers were in North and South Kivu (in eastern Zaire), they still had in their possession all the weapons they were armed with in Rwanda. Furthermore, some outside circles have continued to arm them, with the complicity of the Zairian Government. This concentration of weapons in the hands of the Rwandan militiamen and ex-soldiers has had the immediate consequence of extending the massacres and acts of genocide into eastern Zaire, as indicated above. Even so, these armed criminals have continued to be labelled as refugees.

And yet the 1951 international conventions and the 1969 OAU Convention are unequivocal on the subject. They deny the status of refugees to criminal perpetrators of genocide and to anyone bearing arms or involved in breaches of the peace.

For its part, the Office of the United Nations High Commissioner for Refugees had already drawn attention to this situation, while emphasizing that without the support of the host country, it was unable on its own to separate the militiamen and ex-soldiers from the ordinary refugees.

B. Militiamen and ex-soldiers fighting alongside the Zairian Army

For the record, the selective massacres conducted in North Kivu against one category of the Kinyarwanda-speaking population from February to August 1996 were subsequently extended to South Kivu. Until that time, they had been organized primarily by the Rwandan militiamen and ex-soldiers, with the complicity and assistance of certain civilian and military authorities in eastern Zaire.

In September 1996, the Banyamulenge of South Kivu, one of the Kinyarwanda-speaking groups in Zaire, refused to submit to extermination and took up arms against the aggressors. They had to contend with the Rwandan militiamen and ex-soldiers, as well as with the Zairian Army, which this time assumed control of the operations.

This turn of events was extremely embarrassing for the Government in Kinshasa. The previous massacres had often been presented as having been carried out by the criminal perpetrators of the Rwandan genocide, who were long out of control in eastern Zaire. The awkward fact this time was that the Zairian authorities appeared to be engaging in these massacres alongside the latter, against their own population. It was at this time that the Zairian authorities had to justify their official involvement by means of an imaginary external threat, ensuring media coverage of which was sufficient for their purpose. In addition, this constituted a pretext capable of explaining any possible call for outside military assistance against an internal resistance which appeared to be organized. Since then, Rwandan militiamen and ex-soldiers have become fully involved in this war between Zairians which they had in fact provoked. They have continued to fight alongside the Zairian army, whether in South Kivu, North Kivu or, now, in Haut-Zaire.

It is in these circumstances that hundreds of thousands of refugees hitherto held hostage by the same militiamen and ex-soldiers have been able to return en masse to their country of origin. Those in charge of the camps, who had remained armed since July 1994, were occupied elsewhere, or even rendered helpless by the consequences of the war.

Thus the mass return of these refugees which began on 15 November 1996 permitted a definitive solution to the question of the refugees in eastern Zaire. Of the hundreds of thousands of refugees, there remain only tens of thousands of people, comprising militiamen and ex-soldiers, together with their families, in Haut-Zaire. They are located primarily at Tingi-Tingi, a true large-scale military camp which is supplied with arms and munitions by the Zairian military authorities.

The situation has now become sufficiently clear, in that the mass return of the refugees to Rwanda and the position taken by the militiamen and ex-soldiers in this war in Zaire now make it possible to dispel any doubt on the subject. There had long been doubt as to the status of the refugee camps, at the time when refugees along with militiamen and former soldiers still bearing arms were housed together in them.

Thus the international community is called upon to adjust its position before it is too late. There is an urgent need to stop assigning to the Rwandan militiamen and ex-soldiers who committed genocide a refugee status which they do not possess.

CONCLUSION

The Rwandan Government welcomes the recent nomination of Mr. Mohammed Sahnoun as Special Representative of the United Nations and OAU in the Great Lakes region. It hopes at the same time that he will help give the international community a better understanding of the realities prevailing in that region.

Prominent among the sensitive issues that already merit the attention of the Special Representative of the United Nations and OAU is the crisis in eastern Zaire. It involves an internal war which broke out in September 1996, but whose causes date from the beginning of that year, in that the Alliance forces currently fighting the Mobutu regime were reacting to the violence, massacres and acts of genocide committed successively in North and South Kivu since February 1996.

They were reacting also to the cavalier attitude taken by the Zairian Government to issues as basic as the right to nationality, which have literally been left to the whim of politicians.

The politicians have even gone so far as to call in question the nationality of the Kinyarwanda-speaking Zairian populations, a nationality automatically conferred on them by the drawing of the colonial frontiers in 1885. The result has been deliberate action to drive them out of their ancestral territories in North Kivu (Rutshuru, Masisi, Goma) and South Kivu (the region of the Banyamulenge).

It was all these cases of violation of inalienable rights, accompanied by action to exterminate one or another population group, which were at the origin of this war. It is undoubtedly through analysis of such problems, in addition to other claims strictly internal to Zaire, that a lasting solution to the crisis must be sought. To view the Zairian crisis in any other terms would be tantamount to misdiagnosing the situation.

The countries of the region, including Rwanda, which have often been accused by the Zairian Government, have no territorial claims to assert. On the contrary, they would like this neighbouring country to regain its domestic stability in the interests of lasting peace in this part of the continent.

On the other hand, Rwanda is indignant that Zaire should today, on its own territory, be playing the game of the criminal perpetrators of the Rwandan genocide.

After having been accomplices of, and even assisted, the militiamen and ex-soldiers in committing acts of genocide in North and South Kivu, the Zairian

authorities have now gone so far as to enlist them alongside the regular Army and mercenaries.

This raises a question of public morality, both national and international, and poses a severe challenge to the responsibility of the international community. In the final analysis, should armed militiamen and ex-soldiers continue to be treated as refugees even now, when the genuine refugees who were for a long time held hostage have returned to Rwanda?

When all is said and done, should not the Zairian Government be called upon to shoulder its responsibilities to its own citizens in eastern Zaire, and be publicly challenged for having worked for the return of mercenaries to Africa, 40 years after independence?

(Signed) Anastase GASANA
Minister for Foreign Affairs and Cooperation